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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RON SMITH,
PSH #166543-9,

Plaintiff,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Defendant.

Civil No. 13cv2809 WQH (WMc)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEES REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, currently incarcerated at Patton State Hospital (“PSH”) and proceeding pro se, filed a civil complaint entitled “Civil Right Disability Right to Due Process” (ECF Doc. No. 1) on November 14, 2013.

I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a party’s failure to

¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a), (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, eff. May 1, 2013. However,

1 pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP")
 2 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
 3 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

4 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 5 commence a civil action, nor has he submitted a Motion to Proceed IFP that complies
 6 with 28 U.S.C. § 1915(a).² Therefore, the case cannot yet proceed. *See* 28 U.S.C.
 7 § 1914(a); *Andrews*, 493 F.3d at 1051.

8 **II. CONCLUSION AND ORDER**

9 For the reasons set forth above, the Court hereby:

10 (1) **DISMISSES** this action *sua sponte* without prejudice for failing to pay the
 11 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to
 12 28 U.S.C. § 1914(a) and § 1915(a); and

13 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is
 14 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; *or*
 15 (b) complete and file a Motion to Proceed IFP *which includes a certified copy of his trust*
 16 *account statement for the 6-month period preceding the filing of his Complaint. See* 28
 17 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).³

18 the additional \$50 administrative fee is waived if the plaintiff is granted leave to proceed IFP.
 19 *Id.*

20 ² Plaintiff has submitted a prison certificate signed by a PSH trust officer (ECF Doc. No.
 21 2). However, Plaintiff has failed to "submit an affidavit that includes a statement of all assets
 22 [he] possesses," and has failed attach a copy of his trust account statements for the 6-month
 23 period immediately preceding the filing of his complaint as is required by 28 U.S.C. § 1915(a)(1)
 24 & (2).

25 ³ Plaintiff is cautioned that if he chooses to proceed with this action by properly moving
 26 to proceed IFP, he will nevertheless "be required to pay the full amount of a filing fee" pursuant
 27 to 28 U.S.C. § 1915(b)(1). Moreover, his Complaint, which is comprised of only a list of health
 28 issues he has faced "starting at Atascadero State Hospital" in 2010, appears to raise issues of
 "false imprisonment" and "perjury" related to a California Welfare and Institutions Code § 5150
 commitment hearing held in Imperial County Superior Court in March 2013 (Compl. ECF Doc.
 No. 1 at 1-2), fails to currently contain any plausible claim for relief available pursuant to 42
 U.S.C. § 1983. Therefore, if Plaintiff elects to proceed further, his complaint will be screened
 and immediately subject to dismissal, regardless of his fee status, pursuant to 28 U.S.C.
 § 1915(e)(2)(B). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting
 that 28 U.S.C. § 1915(e) "not only permits but requires" the court to *sua sponte* dismiss an *in*
forma pauperis complaint that is frivolous, malicious, fails to state a claim, or seeks relief from

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
2 with this Court's approved form "Motion and Declaration in Support of Motion to
3 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee
4 or fully complete and submit the enclosed Motion to Proceed IFP within that time, this
5 action shall remain dismissed without prejudice and without further Order of the Court.

6
7 DATED: 12/17/13


8 HON. WILLIAM Q. HAYES
9 United States District Judge

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27 defendants who are immune). A person in state custody simply may not use a § 1983 civil rights
28 action to challenge the "fact or duration of his confinement." *Preiser v. Rodriguez*, 411 U.S.
475, 489 (1973). He must seek federal habeas corpus relief instead. *Wilkinson v. Dotson*, 544
U.S. 74, 78 (2005) (citing *Preiser*, 411 U.S. at 489).